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From: Peter Jorgensen <jorgensen@ascit.buffalo.edu>
To: A16.A16(rm8775)
Date: 5/6/96 12:05pm
Subject: RM 8775

MAY - 6 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Greetings,

Government regulation is necessary to prevent monopolies from abusing their exclusive access to the market. We regulate suppliers of electricity, natural gas (piped directly to the user) and telephone service, among others, because they are not operating in a competitive marketplace. I cannot choose a different natural gas supplier for my home because the city would not allow a second company to come through ripping up streets to lay pipelines to serve me. The same applies to the telephone and electrical services.

The Internet is a highly competitive service that has many providers from which I can choose. This type of market does not need government regulation as it is regulated adequately by market forces.

The passenger railroads have nearly gone out of business because they do not recognize the true business they are in. No amount of regulation of buses, airplanes or trucking can help the railroads. Neither will regulation of the Internet ultimately help the companies that don't realize that voice is just another type of data.

I strongly oppose government regulation of any kind on the Internet.

Peter Jorgensen
Citizen and taxpayer
Buffalo, NY

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MAY - 6 1996

From: <spacecase@earthlink.net>
To: A16.A16(rm8775)
Date: 5/6/96 1:40pm
Subject: RM No. 8775

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

I feel ACTA's petition is not in the public interest. The public is best served with the lowest cost medium to conduct business that provides adequate service. The consumer will gravitate toward the system that is best for them in their situation. If using the Internet as a medium to conduct business is illegal then please let me know. The use of the Internet for 'Telephone' or 'Telephony' type of applications is NO different than me sending this e-mail to you... it is just another form of communication that has risen out of new technologies becoming available to the public. This is just another agency feeling threatened and wanting to regulate to protect their market share. These companies that write these programs are NOT committing a crime nor are they providing 'Telecommunication Services'. If that is the case... why isn't any other type of 'Telecommunication' company such as Netscape, or Microsoft mentioned regarding their 'Telecommunication services' products... this is clearly an effort by the ACTA members to reap increasing profits by squeezing the up-and-coming innovators out of the industry. Please don't be dissuaded by this rhetoric.

In closing I feel one important point to mention, in all likelihood the ACTA members are the owners of the wires that the data is transmitted over, therefore the need to regulate them. The user pays fees to the phone company and the Internet Service Provider for use of these services and for maintenance of the infrastructure... The companies mentioned in the challenge do not own, maintain, or service any of the network their products use, furthermore, the companies themselves pay their phone company and ISP for their access to the internet... therefor negating this conversation entirely. Everybody mentioned is just a user of the Internet... we don't own it like ACTA members do... there's quite a difference.

Case spacecase@earthlink.net please feel free to contact me if necessary.

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From: Nathan M. DeVaughn <devaughn@neurpath2.mcg.edu>
To: A16.A16(rm8775)
Date: 5/6/96 12:02pm
Subject: RM No. 8775

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MAY - 6 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

From: Nathan M. DeVaughn
Research Projects Manager
Medical College of Georgia
devaughn@np2.mcg.edu
706.733.0188x2686

Date: May 06, 1996

Please take note of my following comments with reference to RM No. 8775.

Lines containing text quoted from the SUMMARY OF FILING are begun with the character >

Lines containing text from these comments are begun with the characters

Thank You,
Nathan M. DeVaughn

>SUMMARY OF FILING

>

> America's Carriers Telecommunication Association ("ACTA"), a
>trade association of interexchange telecommunications companies,
>submits this Petition for Declaratory Ruling, for Special Relief,
>and for Institution of Rulemaking Proceedings. This petition
>concerns a new technology: a computer software product that
>enables a computer with Internet access to be used as a long
>distance telephone, carrying voice transmissions, at virtually no
>charge for the call.

----The Internet is enabled because a growing number of institutions,
----organizations, and companies maintain (at their own expense)
----full or part-time electronic circuits connecting them one unto
----the other. The contention that these "voice transmissions" occur
----at virtually no cost is not valid. The costs incurred by the
----parties to these transmissions may be low (relative to historical
----costs for long distance telecommunications), but it is real and the
----revenue therefrom (in almost all cases) is realized by the member
----organizations of ACTA.

> ACTA submits that the providers of this software are tele-
>communications carriers and, as such, should be subject to FCC
>regulation like all telecommunications carriers. ACTA also
>submits that the FCC has the authority to regulate the Internet.

----The "providers of this software" are not providing any transmission
----services whatsoever. They are merely providing a software tool for
----encoding data (an increasingly fungible commodity) for transmission
----over the conduits provided by the member organizations of ACTA.
----Any revenues realized by the "providers of this software" is much
----like the revenue realized by manufacturers of [speaker-phones],
----[answering-machines], or any other device which increases the utility
----of the existing switched telephone networks.

> ACTA submits that it is not in the public interest to permit
>long distance service to be given away, depriving those who must
>maintain the telecommunications infrastructure of the revenue to

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>do so, and nor is it in the public interest for these select
>telecommunications carriers to operate outside the regulatory
>requirements applicable to all other carriers.

-----It most certainly IS in the public interest to permit long distance
-----service to be had at a much lower price due to advances in technology.
-----The use of the words "given away" is inaccurate at best, and is more
-----likely a transparent attempt by the member organizations of ACTA to
-----influence the actions of the FCC through dis-information and double-speak.

> ACTA asks the Commission to issue a declaratory ruling
>confirming its authority over interstate and international
>telecommunications services using the Internet.

-----Inasmuch as such authority already exists, any such re-iteration would
-----constitute a waste of public resources which the FCC should use for
-----consideration of issues which are actually unresolved or unconfirmed.

> ACTA asks the Commission, as special relief, to order the
>Respondents to immediately stop their unauthorized provisioning
>of telecommunications services pending their compliance with 47
>U.S.C. Sections 203 and 214, and in order to give the Commission time
>for appropriate rulemaking.

-----No such order is appropriate since the "providers of this software" are
-----not "provisioning of telecommunications services".

> ACTA asks the Commission to institute rulemaking to govern
>the use of the Internet for providing telecommunications ser-
>vices.

-----The Commission should recognize this petition for what it suggests:

-----1. That the member organizations of ACTA seek to inhibit and obstruct
-----the economic gains made possible by advances in technology except that
-----those gains be for themselves.
-----2. That the member organizations of ACTA have, at the outset, resorted
-----to mis-information and instigations to support their inappropriate and
-----invalid petition.
-----3. That the member organizations of ACTA are motivated to protect their
-----out-dated and inflated charges for long-distance and other services at all
-----costs. That these attempts will continue regardless of the opinion, intent
-----or rulings of the FCC and that action (by the FCC) to prevent such unilateral
-----actions by the member organizations of ACTA is warranted

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44-2770

MAY - 6 1996

From: Frank Mullin <frank-mullin@earthlink.net>
To: A16.A16(rm8775)
Date: 5/6/96 5:43am
Subject: Comments

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

I strongly urge that the petition be denied. It would be inappropriate to restrict the development of this technology with such promise only for the benefit of major corporate interests.

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From: Greg Mead <mead@packet.net>
To: A16.A16(rm8775)
Date: 5/6/96 10:06am
Subject: Report No. CC 96-10

11-6-1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

To whom it may concern:

I just finished reading report number CC 96-10 which discussed requiring makers of internet telephony and videoconferencing software and hardware to comply with the same regulatory standards as the current telecom. companies responsible for local and long-distance telephone service.

The fact that such an idea is even being entertained disturbs me. The internet is a *data* medium and is being managed and regulated as such. What sort of data I choose to send (within reason, of course) is my business. Not the FCC's, not the government's, not my sisters', brothers', dogs' business. My potential phone or video signal is just another packet of data travelling over the net.

This attempt to force regulation is ironic considering the recent, broad deregulation of the phone/cable/communications industries. Moreover, it is sheerly profit motivated. the long-distance carriers are afraid I might make a call to some far-away friend or relative, and that I can do so without paying them for the privilege.

In closing, I would submit that such action would be futile. Noone can stop the 'net users from writing and distributing their own software that would use existing hardware to accomplish the same task. In the end, the only people who will be hurt are those businesses trying to make a living by making the net a better place.

Sincerely,

Greg Mead greg@mead.net

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DOCKET FILE COPY ORIGINAL

From: James Pelton <jpelton@popmail.jba.com>
To: A16.A16(rm8775)
Date: 5/6/96 10:49am
Subject: RM No. 8775

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FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE

What possible Good can come out of FCC regulation of internet-based "tele" communcations that would outway the inescapable Bad of stifled development and innovation? What hue and cry is there to regulate this sector beyond beaurocrats' desires to extend their power? In no sense does this trammelling of freedom constitute an undeniable good. Any attempt to regulate this area of comuncation will succeed only in forcing the large U.S. based software developers out of the market, giving it to foreign developers.

The world will laugh at us for this; let's say no to this folly.

sincerely,

James Pelton
Assistant MIS Director
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(312) 494-5524

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5/6/96

From: Joey Reid <Joseph.P.Reid-1@tc.umn.edu>
To: A16.A16(rm8775)
Date: 5/6/96 11:11am
Subject: RM No. 8775

FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE

I strongly protest the petition. It is an act against the people, all people using the internet, that benefits only big businesses. One thing doesn't go their way and they think that they can use there multi-billion dollar muscle to get things to go back their way. I don't believe in this kind of government and nobody should have their lives run by the businesses that already have too much control.'

Joey Reid

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6-6-96

11:00 - 6:00

From: Gene Foust <gfoust@ball.com>
To: A16.A16(rm8775)
Date: 5/6/96 11:21am
Subject: RM No. 8775

RECEIVED
U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D.C. 20535

In reference to RM No. 8775

I am not a user of the type of phone services mentioned by the ACTA, nor do I have any financial interest in any of them. However I do use the Internet frequently, and am a student of logic (as distinct from law). I disagree completely with the following statement:

- >ACTA submits that it is not in the public interest to permit
- >long distance service to be given away, depriving those who must
- >maintain the telecommunications infrastructure of the revenue to
- >do so, and nor is it in the public interest for these select
- >telecommunications carriers to operate outside the regulatory
- >requirements applicable to all other carriers.

This is just sour grapes. It probably isn't in their interest, but I don't see anyway that can translate into being against the public interest.

The U.S. Postal Service is not up in arms because people are using email instead of surface mail.

Like it or not, the 'telecommunications carriers' only provide lines which carry information.

Whether this information is data, voice, video, music, etc. is something over which they have little control, which is as it should be.

The Internet lines connecting the various Internet Service Providers are provided by the 'telecommunications carriers', and certainly are not free. They didn't complain when they found the opportunity to sell this service. They not only want to charge for the lines over which we communicate, but they want to control what we send over those lines. My faint memory seems to recall that AT&T and MCI fought over charging more for data access as opposed to voice in the 60's.

Since then, the information carried on the lines has been irrelevant.

These same 'telecommunications carriers' will sell anyone video conferencing services. Now that someone else wants to sell these services they are up in arms.

Finally, the makers of software such as Internet Phone, etc. are not 'telecommunications carriers' as alleged, but just providers of software programs. The fact that these programs send each other data that can be interpreted as sound is only incidental. Programs such as Eudora send each other data which can be interpreted as characters.

Gene Foust
P.O. Box 555
Niwot, CO 80544

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From: <TurboJesse@aol.com>
To: A16.A16(rm8775)
Date: 5/6/96 11:27am
Subject: RE: RM No. 8775

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MAY 6 1996
FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE

As a private citizen, I am declaring my strong opposition to any additional regulations governing the internet especially regarding "internet phone" software as called for in ACTA's recent petition for ruling's and regulation's concerning this software.

This is new technology and the phone carriers will just have to deal with it and adapt. This is akin to railroad bridges across the mississippi in the last century undermining the barge and ferry carriers. The last thing we need is govt regulation of the evolving information highways. It is best left alone to evolve at it's own pace. Considering bandwidth limitations, audio quality and the necessity of both parties being on-line to initiate the "call" I cannot see this method of communications having any significant impact on long distance carriers revenues or operations for a very long time to come.

Jesse Brown
Sr Systems Analyst
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jbrown@nlm.nih.gov

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DOCKET FILE COPY ORIGINAL

From: Steve Levinson <levinson@ee.rochester.edu>
To: A16.A16(rm8775)
Date: 5/6/96 11:59am
Subject: ACTA petition for protection

100-6-1111
FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE

As I understand it, the America's Carriers Telecommunication Association (ACTA) is petitioning the FCC to basically halt the use of the internet as a substitute telephone system. This seems pretty ironic since the member companies were not long ago pushing the telecommunications act through Congress in order to deregulate telecommunications in general. In other words, they want to be able to compete in new markets as long as they have some control over who competes with them in theirs.

The FCC regulates phone service in America. The FCC does not regulate the internet. But the two forms of telecommunication often share the same cables and satellites. If the FCC moves on this petition to protect the members of the ACTA by regulating or banning telephone services over the internet, they will effectively be claiming jurisdiction over the Internet. This would set a potentially devastating precedent in which all forms of internet communication that have a regulated competitor could be regulated. Other countries would likely follow suit.

I can understand the concerns of the ACTA - after all, they must submit to FCC regulation and feel that the internet represents unfair competition, but internal regulation of the Internet by the individual countries it serves could significantly undermine its potential. Realistically, the internet as it exists now cannot effectively compete with phone service in the first place, since it does not have the capacity to be a significant competitor. In the future, it probably will have the capacity for this as well as for television and a host of other services. But by then the boundaries between the internet, telephone service and television will be so blurred as to largely be irrelevant. I believe the ACTA should leave well enough alone. Otherwise their short-sightedness may well stifle their own future.

UNIVERSITY OF | Stephen F. Levinson, MD, PhD
| Depts. of Rehab. Med. & EE
| 601 Elmwood Ave, Box 664, Roch, NY 14642
| Phone: (716)275-3271 Fax: (716)275-8481
| mailto:levinson@ee.rochester.edu

100-6-1111
FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE

DOCKET FILE COPY ORIGINAL

From: Don Reed <don@alcuin.com>
To: A16.A16(rm8775)
Date: 5/6/96 3:48am
Subject: RM No. 8755

FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE

This is a multi-part message in MIME format.

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Content-Type: text/plain; charset=us-ascii
Content-Transfer-Encoding: 7bit

Dear commissioners:

This comment is filed "informally" because it is not possible to reply "formally" in the time available. I, as well as most people on the Internet, only heard about the petition filed by ACTA for Declaratory Ruling, Special Relief, and Institution of a Rulemaking relating to the provision of instant and international interexchange telecommunications service via the "Internet" by non-tariffed, uncertified entities, in the last few days. It may have been common knowledge inside the Beltway and among the telephone companies and their lobbyists, but it was not mentioned in the newspapers most people read.

I think that this proposed action violates the spirit of the new Telecommunications Act passed by Congress and signed by the President, whose purpose was to increase competition in telecommunications. What the telephone companies are requesting is clearly protection against competition from outside their "club". It is exactly as if IBM had requested the government in 1978 to ban sales of the Apple II, a machine which, with its followers, eventually broke IBM's iron hold on the computer industry.

At one time, AT&T was able to prevent any "foreign device" (i.e., non-Bell modem or fax machine) from being attached to their lines. Only when this corporate rule was overthrown did the vast on-line industry get its start (Bell modems ran at 110 characters per second; non-Bell modems ran faster, and now run at 28800 characters per second or faster. Faxes also took off after this rule was overturned.

PacBell, AT&T, and other large telephone companies seek to protect the past, by preventing new competitive technologies from developing and possibly making them obsolete. They want to do so by making the new Internet-phone manufacturers (who are not common carriers because they don't own the lines that carry the signals; Panasonic is not a common carrier because it makes telephones) subject to the recently-repealed act of 1934

They want competition, but they don't want competition. I say, they paid millions in lobbyists' fees and campaign contributions to ensure the passage of the telecommunications bill, which was custom tailored to their specifications: let them now abide by the bill they wanted so desperately, in all points and not just when it suits them.

Please reject ACTA's petition in the name of free and robust competition, in compliance with the Telecommunications Act of 1996.

-- Don Reed
Drive
95129-2208
<http://www.alcuin.com/>

don@alcuin.com 978 Rockdale
408-446-9763 San Jose, CA

-----3F7242949F8
Content-Type: text/html; charset=us-ascii
Content-Transfer-Encoding: 7bit
Content-Disposition: inline; filename="actapet1.htm"

<BASE HREF="http://www.von.org/actapet1.htm#named">

<HTML>

<HEAD>

Don Reed
Lect / ECSE

<TITLE> ACTA FCC PETITION, March 4, 1996 </TITLE>

</HEAD>

<BODY>

<PRE WIDTH="80">

<CENTER>BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

</CENTER>

In the Matter of

THE PROVISION OF INTERSTATE AND

INTERNATIONAL INTEREXCHANGE

TELECOMMUNICATIONS SERVICE VIA THE

"INTERNET" BY NON-TARIFFED, UNCERTIFIED

ENTITIES

AMERICA'S CARRIERS TELECOMMUNICATION

ASSOCIATION ("ACTA"),

Petitioner

PETITION FOR DECLARATORY RULING,

SPECIAL RELIEF, AND

INSTITUTION OF RULEMAKING AGAINST:

VocalTec, Inc.; Internet Telephone

Company; Third Planet Publishing Inc.;

Camelot Corporation; Quarterdeck

Corporation; and Other Providers

of Non-tariiffed, and Uncertified

Interexchange Telecommunications

Services,

Respondents.

To the Commission:

SUMMARY OF FILING

America's Carriers Telecommunication Association ("ACTA"), a trade association of interexchange telecommunications companies, submits this Petition for Declaratory Ruling, for Special Relief and for Institution of Rulemaking Proceedings. This petition concerns a new technology: a computer software product that enables a computer with Internet access to be used as a long distance telephone, carrying voice transmissions, at virtually no charge for the call.

ACTA submits that the providers of this software are telecommunications carriers and, as such, should be subject to FCC regulation like all telecommunications carriers. ACTA also submits that the FCC has the authority to regulate the Internet

ACTA submits that it is not in the public interest to permit long distance service to be given away, depriving those who must maintain the telecommunications infrastructure of the revenue to do so, and nor is it in the public interest for these select telecommunications carriers to operate outside the regulatory requirements applicable to all other carriers.

ACTA asks the Commission to issue a declaratory ruling

confirming its authority over interstate and international telecommunications services using the Internet.

 ACTA asks the Commission, as special relief, to order the Respondents to immediately stop their unauthorized provisioning of telecommunications services pending their compliance with 47 U.S.C. Sections 203 and 214, and in order to give the Commission time for appropriate rulemaking.

ACTA asks the Commission to institute rulemaking to govern the use of the Internet for providing telecommunications services.

<HR>

PETITION FOR DECLARATORY RULING,
SPECIAL RELIEF, AND INSTITUTION OF RULEMAKING

America's Carriers Telecommunication Association ("ACTA"), by its attorneys, submits this Petition for Declaratory Ruling, for Special Relief, and for Institution of Rulemaking Proceedings. In support of this petition, the following is shown.

STANDING

ACTA is a national trade association of competitive interexchange, non-dominant telecommunications companies. Its members provide interexchange telecommunications services on an intrastate, interstate and international basis to the public at large.

Some of its members also act as underlying (or wholesale) carriers providing network facilities, equipment and service to other member carriers which permits telecommunications services to be resold to the public. Other ACTA members supply facilities and equipment to member and non-member wholesale and resale carriers.

ACTA's carrier members must be certificated and tariffed before the FCC and most state regulatory commissions in order to render their telecommunications service to the public. In addition, ACTA carrier members are subject to the requirements of the Communications Act of 1934, as amended (the "Act"), and various state laws and regulations which prohibit engaging in unreasonable practices and/or unduly discriminatory conduct.

ACTA carrier members are required to pay, directly, or indirectly, various fees and charges in order to render their services to the public. Filing fees and annual fees are levied by the FCC and most states.

In addition, the FCC and most states require interexchange carriers to assess and collect from the using public specific charges to support various regulatory policies and programs used to sustain and advance national and state goals for telecommunications.

Entities, like those which are described hereinafter, which do not comply with or operate subject to the same statutory and regulatory requirements as ACTA's carrier members, distort the economic and public interest environment in which ACTA carrier

members and nonmembers must operate. Continuing to allow such entities to operate without complying with or being subject to the same legal and regulatory requirements as ACTA carrier members threatens the continued viability of ACTA's members and their ability to serve the public and acquit their public interest obligations under federal and state laws.

As the appointed representative of its members charged with advancing their economic interests and assisting in achieving and maintaining their legal and regulatory compliance, ACTA has standing to file and prosecute these petitions.

STATEMENT OF FACTS AND BACKGROUND

A growing number of companies are selling software for the specific purpose of allowing users of the Internet to make free or next to free local, interexchange (intraLATA, interLATA) and international telephone calls using the user's computer (Attachment 1). One of the Respondents, VocalTec, Inc., advertises the ability of its software called "Internet Phone," to connect any user of "Internet Phone" with any other user of "Internet Phone" anywhere in the world. The software enables users to audibly talk with one another in real-time. Respondents make a one-time charge for the software, but users incur no other charges for making local or long distance telephone calls to any other "Internet Phone" user in the world (except for whatever the user already pays monthly to whomever provides them Internet access)

ASSERTION AND ENFORCEMENT OF JURISDICTION

ACTA submits that it is incumbent upon the Commission to exercise jurisdiction over the use of the Internet for unregulated interstate and international telecommunications services. As a first step, ACTA submits that the Commission may deem it appropriate to issue a declaratory ruling officially establishing its interest in and authority over interstate and international telecommunications services using the Internet.

Secondly, ACTA submits that the Commission has an obligation, heightened by the recent enactment of the Telecommunications Act of 1996, to address on a focused basis the on-going unregulated and unauthorized provisioning of telecommunications services. The Commission should, as special relief, issue an order to the Respondents to immediately stop arranging for, implementing, and marketing non-tariffed, uncertified telecommunications services without complying with applicable provisions of the Act, particularly Sections 203 and 214, codified at 47 U.S.C. Sections 203 and 214.

Further, ACTA submits that it is incumbent upon the Commission to examine and adopt rules, policies and regulations governing the uses of the Internet for the provisioning of telecommunications services. The use of the Internet to provide telecommunications services has an impact on the traditional means, methods, systems, providers, and users of telecommunications services. The unfair competition created by the current unregulated bypass of the traditional means by which long distance services are sold could, if left unchecked, eventually create serious economic hardship on all existing participants in the long distance marketplace and the public which is served by those

participants. Ignored, such unregulated operations will rapidly grow and create a far more significant and difficult to control "private" operational enclave of telecommunications providers and users. Such development will clearly be detrimental to the health of the nation's telecommunications industry and the maintenance of the nation's telecommunications infrastructure.

ARGUMENT

<U>Commission's Authority to Regulate the Internet</U>. ACTA submits that the Commission has the authority to regulate the Internet under the provisions of 47 U.S.C. Section 151, which created the Commission:

[for the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense. for the purpose of promoting safety of life and property, through the use of wire and radio communication. . . .

The Internet is a unique form of wire communication. It is a resource whose benefits are still being explored and whose value is not fully realized. Its capacity is not, however, infinite.

The misuse of the Internet as a way to bypass the traditional means of obtaining long distance service could result in a significant reduction of the Internet's ability to handle the customary types of Internet traffic. The Commission has histori-

cally protected the public interest by allocating finite communications resources/frequencies and organizing communications traffic. ACTA submits that here also it would be in the public interest for the Commission to define the type of permissible communications which may be effected over the Internet.

<U>Commission's Authority to Regulate Respondents as Interstate Telecommunications Carriers</U> ACTA submits that by both established precedents defining "common carriage" or public utility" type of operations for purposes of regulatory jurisdiction, and by statutory enactment, the Respondents, as purveyors of Internet long distance services, are interstate telecommunications carriers, subject to federal regulation. Section 3 of the new "Telecommunications Act of 1996," Pub. L. No. 104-104, 110 Stat. 56 (1996), to be codified at 47 U.S.C. Section 153, includes the following definitions:

(48) Telecommunications.--The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(49) Telecommunications Carrier.--The term "telecommunications carrier" means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226). A telecommunications carrier shall be treated as a common carrier under this Act only to the extent that it is engaged in providing telecommunications services, except that the Commission shall determine

whether the provision of fixed and mobile satellite service shall be treated as common carriage.

(51) Telecommunications Service.--The term "telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

It would appear that Respondents are currently operating without having complied with the requirements of the Communications Act of 1934, as amended, applicable to providing interstate and international telecommunications services. e.g., Sections 203 and 213, codified at 47 U.S.C. Sections 203 and 214.

Case law also supports the Commission's authority to regulate the Respondents. In 1968, the Supreme Court was presented the issue of the Commission's authority to regulate the cable television industry, or CATV, then still in its infancy but growing quickly. In *United States v. Southwestern Cable Co.*, 392 U.S. 157 (1968), the Supreme Court had to decide whether the Federal Communications Commission 1) had the authority under the Communications Act of 1934, as amended, to regulate CATV systems, a new technology and therefore not specifically discussed in the Act, and 2) if the Commission had such authority, whether it also had the authority to issue the particular prohibitory order that it had: one designed generally to preserve the status quo pending further investigation and proceedings, and not issued pursuant to the cease and desist rules of Section 312 of the Act (47 U.S.C.

Section 312).

The Supreme Court answered both questions in the affirmative. The Supreme Court stated that "the [Federal Communications] Commission has reasonably concluded that regulatory authority over CATV [was] imperative if it [was] to perform with appropriate effectiveness certain of its other responsibilities." *Id.* at 173. At that time, cable television characteristically neither produced its own programming nor paid producers or broadcasters for use of the programming which CATV redistributed. *Id.* at 162. The Court noted the Commission's concern that competition by CATV might destroy or degrade the service offered by local broadcasters and exacerbate the financial difficulties of UHF and educational television broadcasters.

<U>Commission's Authority to Grant Special Relief to Maintain the Status Quo</U>. With regard to the procedural issue, the Court in *Southwestern Cable* upheld the authority of the Commission to issue an order maintain the status quo. The argument was made that the Commission could only issue prohibitory orders under the Act's Section 312 cease and desist provisions which, the Court assumed without finding, were only proper after a hearing or the waiver of the right to a hearing. The Court rejected that argument, stating:

 The Commission's order was thus not, in form or function, a cease-and-desist order that must issue under Sections 312(b), (c). The Commission has acknowledged that, in this area of rapid and significant change, there may be situations in which its generalized regulations are inadequate, and special or additional

forms of relief are imperative. It has found that the present case may prove to be such a situation, and that the public interest demands "interim relief limiting further expansion," pending hearings to determine appropriate Commission action. Such orders do not exceed the Commission's authority. This Court has recognized that "the administrative process [must] possess sufficient flexibility to adjust itself to the "dynamic aspects of radio transmission," *F. C. C. v. Pottsville Broadcasting Co.*, supra, at 138, and that it was precisely for that reason that Congress declined to "stereotype the powers of the Commission to specific details..... *National Broadcasting Co. v. United States*, supra, at 219.

The Commission should take the same action in 1996 with regard to the new technology of long distance calling via Internet as it did thirty years ago in 1966 with regard to the then-new technology of cable television: grant special relief to maintain the status quo so that it might carefully consider what rules are required to best protect the public interest and to carry out its statutory duties.

<U>Other Issues Necessitating the Commission's Regulation of Long Distance via the Internet</U>. The Commission has a duty to oversee and effect the Telecommunications Act of 1996 as well as its long-standing duties under 47 U.S.C. Section 151. The Commission should take action in order to preserve fair competition and the health of the Nation's telecommunications industry. Absent a healthy industry, with users paying telecommunications companies a fair price for telecommunications services, the Commission's duty to effectively promote universal service cannot be achieved.

Absent action by the Commission, the new technology could be used to circumvent restrictions traditionally found in tariffs concerning unlawful uses, such as gambling, obscenity, prostitution, drug traffic, and other illegal acts.

INFORMATION REGARDING RESPONDENTS

ACTA does not possess a listing of all the companies providing free long distance calls via computer software. However, Attachment I contains some information regarding the following Internet telephone software companies and products:

a. Company: VocalTec, Inc.

157 Veterans Drive

Northvale, NJ 07647

Telephone: (201) 768-9400

Product: Internet Phone

Distributors: VocalTec, Inc.; and

Ventana Communications Group

Research Triangle Park, NC

b. Company: Internet Telephone Company

Boca Raton, FL

Telephone (407) 989-8503

Product: WebPhone

c. Company: Third Planet Publishing Inc.

a division of Camelot Corporation

Product: Digiphone

d. Company: Quarterdeck Corporation
13160 Mindanao Way, 3rd Floor
Marina Del Ray, CA 90292
Telephone (310) 309-3700
Product: WebTalk

e. Company: Unknown

Product: CyberPhone

CONCLUSION

Permitting long distance service to be given away is not in the public interest. Therefore, ACTA urges the Federal Communications Commission ("the Commission") to exercise its jurisdiction in this matter and: issue a declaratory ruling establishing its authority over interstate and international telecommunications services using the Internet; grant special relief to maintain the status quo by immediately stop the sale of this software; and institute rulemaking proceedings defining permissible communications over the Internet.

Respectfully submitted,

AMERICA S CARRIERS